

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 7216

BILL NUMBER: HB 1102

NOTE PREPARED: Jan 31, 2011

BILL AMENDED: Jan 25, 2011

SUBJECT: Synthetic Cannabinoid and Salvia Divinorum..

FIRST AUTHOR: Rep. Yarde

FIRST SPONSOR: Sen. Head

BILL STATUS: As Passed House

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) *Synthetic Cannabinoid:* The bill designates certain synthetic cannabinoids as Schedule I controlled substances.

Salvia Divinorum: The bill also makes possessing, dealing in, manufacturing, or delivering salvia divinorum equivalent to possessing, dealing in, manufacturing, or delivering marijuana, hash oil, or hashish.

It makes conforming amendments and a technical correction.

Effective Date: July 1, 2011.

Explanation of State Expenditures: (Revised) *Summary* - Costs for the incarceration of offenders convicted of controlled substance offenses and other crimes that involve controlled substances or marijuana, hash oil, or hashish could increase if more people are incarcerated as a result of adding synthetic cannabinoids to the list of Schedule I controlled substances and salvia divinorum to several felony and misdemeanor offenses. Also, costs of incarceration could increase because racketeering influence and corrupt organization statutes apply to dealing controlled substance offenses, and, depending on the circumstances of a controlled substance offense, portions of a sentence may not be suspended. Felony murder charges apply when a person kills another person while dealing a Schedule I controlled substance. Although not expected to have a large fiscal impact on state agencies, adding to the Schedule I controlled substance schedules may increase the number of driving license suspensions and professional license revocations (depending on the actions of the court and the professional licensing boards or state agencies involved).

Juvenile courts do not have jurisdiction over cases involving dealing in Schedule I controlled substances if

the person is over 16 years old and has certain prior unrelated convictions or adjudication. Physician assistants may not prescribe Schedule I containing oxycodone. On the other hand, revenues may increase because illegal controlled substances are subject to excise taxes (although minimal amounts have been collected in recent years), criminal offense penalties may include fines, and vehicles or other property involved in controlled substance offenses may be forfeited.

(Revised) *Synthetic Cannabinoid*: The following offenses are affected by the addition of synthetic cannabinoids to the list of Schedule I controlled substances:

- Operating a vehicle while intoxicated causing serious bodily injury (IC 9-30-5-4)
- Operating a vehicle while intoxicated causing death (IC 9-30-5-5)
- Murder (IC 35-42-1-1)
- Corrupt business influence (IC 35-45-6-1)
- Dealing in a Schedule I, II, or III controlled substance (IC 35-48-4-2)
- Possession of a controlled substance (IC 35-48-4-7)
- Other offenses relating to controlled substances (IC 35-48-4-14)

The penalties for these crimes range from felony murder to a Class D felony, and, depending on the circumstances of the crime, these offenses include enhanced penalties. Additionally, repeat offenders of these crimes may be found to be habitual offenders, which may add a fixed minimum term to the length of sentence. It is assumed that most offenders subject to felony murder charges related to Schedule I controlled substances would be subject to determinate sentences.

(Revised) *Salvia Divinorum*: Corrupt business influence, a Class C felony, and possession of a controlled substance, a Class D felony, are affected by the inclusion salvia divinorum in the elements of the crime.

Forfeiture: The bill could increase the forfeiture of vehicles and money or monetary instruments, weapons, communication devices, or property used to commit, attempt to commit, or a conspiracy to commit dealing in a synthetic cannabinoid or salvia divinorum. To the extent that the court would notify the Bureau of Motor Vehicles (BMV) and the BMV produces a clear title for a seized vehicle, costs for the BMV could increase minimally. The funds and resources required above could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions.

(Revised) *Background & Additional Information*:

The following penalties apply to the crimes affected by the changes in the bill.

Crime Class Category	Sentence Range	Average Length of Stay in a DOC Facility
Felony Murder	45 to 65 years; Death Penalty; or Life Imprisonment without Parole	19, 16, or 47.5 years*
Class A Felony	20 to 50 years	9.1 years
Class B Felony	6 to 20 years	3.7 years
Class C Felony	2 to 8 years	2 years
Class D Felony	6 months to 3 years, or Reduction to Class A misdemeanor	10 months
*The average length of stay for a determinate-term penalty is based on 2007 releases to parole and for the death penalty is based on 15 offenders sentenced to death who appealed execution and were executed. For life imprisonment without parole, the average length of stay is estimated.		

The average expenditure to house an adult offender was \$19,307 in FY 2010. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$4,818 annually, or \$13.20 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$68,260 in FY 2010. The average length of stay in a state correctional facility is for all Class D felony offenders is 10 months and for all Class C felony offenders is 2 years.

Explanation of State Revenues: (Revised) *Misdemeanor Offenses:* Operating a vehicle while intoxicated using a Schedule I controlled substance is a Class C misdemeanor. Misdemeanor offenses affected by the inclusion *salvia divinorum* in the elements of the crime follow.

- Dealing in Paraphernalia, Class A misdemeanor
- Reckless Dealing in Paraphernalia, Class B misdemeanor
- Dealing in Marijuana, Hash Oil, or Hashish, Class A misdemeanor
- Possession of Marijuana, Hash Oil, or Hashish, Class A misdemeanor

Drug Offenses: If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a felony is \$10,000, for a Class A misdemeanor is \$5,000, for a Class B misdemeanor is \$1,000, and for a Class C misdemeanor is \$500. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 criminal costs fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

(Revised) *Excise Tax:* Illegal Schedule I controlled substances are subject to a \$40 per gram or other unit excise tax. In FY 2009 and 2010, the average annual excise tax revenue from all schedule controlled substances was \$190.

Forfeiture: The proceeds from the sale of seized property are distributed first to the county sheriff to cover

sale costs; then to any person holding a valid lien or having an interest in the property; and then to the Common School Fund as ordered by the court.

Explanation of Local Expenditures: (Revised) *Drug Offenses:* If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The maximum term of imprisonment for a Class A misdemeanor is up to 1 year, for a Class B misdemeanor is up to 180 days, and for a Class C misdemeanor is up to 60 days. The average daily cost of housing a prisoner is approximately \$44.

(Revised) *Probation:* Additionally, expenses may increase to provide probation officers if probation caseloads increase. [The court may suspend a sentence in excess of the minimum related to controlled substance offenses. If the court suspends the sentence, the offender must be placed on probation for a fixed term that ends not later than the date of the maximum sentence.]

Forfeiture: The prosecuting attorney for the county in which the seizure occurred may cause an action for reimbursement of law enforcement costs and forfeiture to be brought by filing a complaint in the circuit, superior, or county court of the jurisdiction and may retain an attorney to bring the action who is not a deputy prosecuting attorney.

Explanation of Local Revenues: *Drug Offenses:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 criminal costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of the criminal costs fee. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

Forfeiture: A county sheriff may retain proceeds from the sale of a seized property to offset costs associated with its sale.

State Agencies Affected: Department of Correction; Department of Homeland Security; Department of Education; BMV; licensing or certifying boards, commissions, and committees.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Indiana Sheriffs' Association, Department of Correction.

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